

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID DOUGLAS AVERY,

Defendant.

3:02-CR-113-LRH-VPC

ORDER

On January 3, 2017, this court issued an order granting petitioner David Douglas Avery's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (ECF No. 203). ECF No. 214. The court vacated Avery's sentence, resented him to ten years' imprisonment, and re-imposed the terms of supervised release imposed in this court's amended judgment (ECF No. 176). ECF No. 214 at 20.

Because Avery was originally deemed an armed career criminal under the ACCA, the statute required the court to sentence him to not less than fifteen years' imprisonment. 18 U.S.C. § 924(e)(1). Avery was therefore eligible for a five-year maximum term of supervised release, which the court imposed in its amended judgment (ECF No. 176 at 3). 18 U.S.C. §§ 3583(b)(1), 3559(a).

After this court ruled that, under *Johnson v. United States*, 135 S. Ct. 2551 (2015), Avery is no longer an armed career criminal, he was only eligible for a ten-year maximum sentence for violating 18 U.S.C. § 922(g)(1). 18 U.S.C. § 924(a)(2). Accordingly, he may be resented only to a three-year maximum term of supervised release. 18 U.S.C. §§

1 3583(b)(2), 3559(a). The court will therefore amend its last order (ECF No. 214) and
2 impose a three-year term of supervised release.

3 IT IS THEREFORE ORDERED that the court's January 3, 2017 order (ECF No.
4 214) is **AMENDED** only as to the length of David Douglas Avery's term of supervised
5 release.

6 IT IS FURTHER ORDERED that Avery is sentenced to three years of supervised
7 release.

8 IT IS FURTHER ORDERED that all other terms of supervised release imposed in
9 this court's amended judgment (ECF No. 176) and re-imposed in the court's January 3,
10 2017 order (ECF No. 214) remain imposed.

11 IT IS SO ORDERED.

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13 DATED this 10th day of January, 2017.

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16 LARRY R. HICKS
17 UNITED STATES DISTRICT JUDGE
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